UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE:	.	Case No. 08-35653(KRH)
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CIRCUIT CITY STORES INC.,	.	701 East Broad Street Richmond, VA 23219
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	.	
Debtor.	.	April 29, 2010
. . . . .		2:03 p.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

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COURTROOM DEPUTY: In the matter of Circuit City Stores, Incorporated. Hearing on Items one through 22 as set out on debtors' agenda.

MR. FOLEY: Good afternoon, Your Honor. Doug Foley with McGuireWoods on behalf of Circuit City, the debtor.

THE COURT: Good afternoon.

MR. FOLEY: With me from my firm today is Sarah Boehme as well as at counsel table is Gregg Galardi and Ian Fredericks from Skadden Arps. Here from the company today is Katie Bradshaw, who's the vice president and controller, as well as Deborah Miller who is the acting general counsel.

Your Honor, we only have 22 matters on the agenda today, and I believe only one of them is contested. As Your Honor is probably aware, we did file earlier today a motion to establish cross-border protocol with the Canadian proceedings as well as we would like to give the Court -- that's not on the agenda yet -- we would like to have an opportunity to address the Court on that, as well as an update with respect to plan confirmation. And if we could defer from the agenda for a moment and have Mr. Galardi address those two issues to the Court, then we can come back to the agenda if that pleases the Court.

THE COURT: That will be fine, thank you.

MR. FOLEY: Thank you.

MR. GALARDI: Thank you, Your Honor. For the record,

Gregg Galardi. Your Honor, I think in order to understand the protocol, what I'd like to do is start with the status of the confirmation hearing, where we stand, and that will put it in context as to why I'm here to beg to try to get the protocol entered today on a certain notice that was lacking, lacking with respect to general creditors.

Your Honor, first of all, the current status for the confirmation hearing would be May 11th. We are going to seek to adjourn that or to adjourn it over to June 8th. Again, on that month basis. That is the unfortunate news, but let me give Your Honor some idea of some progress that we've made and what is the holdup, which is still the holdup, but I think it's -- we'll fill in the Court a little bit as to what we're trying to do, and I think Mr. Feinstein's on the phone and can also explain any perspective he has on this.

First, Your Honor, we continue to make progress on the claims' matter. Your Honor knows we've been here a number of time making progress on claims. And as I advised Your Honor, I think in one or so hearings, the cash on hand that the debtors have on hand today we believe is adequate to cover our reserve for disputed claims with respect to administrative claims, secured claims that are not otherwise secured by setoffs, and even the priority tax claims. So we don't think there's going to be any issue going effective reserving those.

In addition, Your Honor, what's not even reflected in

those numbers is, Your Honor may know that there was an appeal from Your Honor's 502(d), 503(b)(9) order, we have had a few status conferences with Judge Payne, there were five people who took those appeals. Three of those have been resolved, are being resolved. There are still two pending appeals, and Judge Payne entered an order that will have leave to appeal. We had another status conference today and we will be going forward with that appeal if we don't resolve the last two objections. But I'd even say we're going to get close to even resolving those underlying claims. So that's progress.

In addition, last week we were here in Richmond to meet with Samsung, one of the largest creditors on 503(b)(9) and others, and I'm proud to say that we have reached a tentative settlement with Samsung regarding its claims, 503(b)(9) claims, 502(d) claims and all of the offsets. And that was significant, so even the numbers that I reported to the Court before regarding reserves, we are still making significant progress on that.

In addition, Your Honor, with respect to those two appellants that we hadn't resolved, this morning we filed what I'll call non-opposition papers with respect to their 3020 motions to establish reserves under the plan for those claims, and that will avoid a confirmation objection. And after conversing and having some negotiations with the Committee, we have agreed with the Committee and we think it's wise to avoid

a lot of issues, to establish reserves under what will be a modified plan for all the disputed claims, in general for all of those claims. So the 3020 motions will essentially be mooted or no longer contested. We took the first step today, as I said, one, because Judge Payne would have liked to have seen it and we wanted to make sure he understood that we weren't saying we were going to do it, but we'd actually do it. So we've established reserves.

So with all that good news, the question then comes as well, why aren't we going forward with confirmation on May 11th? As I've explained to Your Honor before, one of the issues has always been that we have the Canadian proceedings, and in Canada there was a successful sale of the business in Canada. In the Canadian proceedings, there is a monitor in there as separate counsel for the debtors, and in that context, the monitor has been going through their claims' process and resolving claims, because the United States' debtors' interest in Canada really is nothing other than a stockholder, and so there won't be a distribution up to the United States until we can get the cash in a stock by way of the stock ownership. That's also complicated by the fact that the immediate parent of the Canadian entity that has cash is a U.S. debtor. But then the immediate parent of that U.S. debtor is a Canadian entity, and then we go back to a U.S. entity.

So to try to make it both a tax -- to make it a tax

efficient transfer to the United States, and therefore not pay a lot of taxes on money which could be anywhere between 90 and $105 million, we have been, along with the Committee's tax advisor in Canada, Galings (phonetic), going through and working through what would be a tax efficient mechanism for bringing that money back to the United States.

We had contemplated in that process, and that gets tied to whether at the end of the day you had a liquidating trust, which is the effect -- which would happen on the effective date of a plan, or you needed a corporate entity. We had made a request for a ruling which contemplated what we called an amalgamation of all these entities underneath Circuit City Stores Inc., right before the effective date of the plan, so we've been holding up going effective on the plan until you did that, because there was a tax ruling that was dependent upon that.

We have still been proceeding down that line, however, as we've made progress with the claims, the need to get the cash up as fast as we wanted to is not as great as it once was to be able to fund the trust. But as we have gone through that process, there was two other issues about how much money that would come up from Canada that had to be resolved. One was, what are the general claims in Canada, and I'm pleased to report those are primarily resolved, and they're not going to be a big hold back.

There was one other issue. The Canadian entity had a subsidiary in France that did not get dissolved and has created an issue as to whether there is a liability for an entity that has not been operating, I think, as late as 2002, whether there would be a tax liability there. We have been looking into that, and of course, a monitor, before making a distribution to a shareholder and a U.S. debtor wants to make sure he either has an adequate reserve or takes account of that claim.

We have been working on that issue and I'm not pleased to say, but an issue has come up about how much that liability has, which has sort of delayed some of the Canada process.

Now, so that then put us, I guess it was probably last week or ten days ago in the process to go back and say, okay, can we go effective on this plan without having to do that amalgamation I talked about beforehand or do we need to wait to do the -- wait to that issue. We are now exploring that and we're hopeful, and the Committee's been involved in this, that you could actually go effective before you need to do the amalgamation and only need to take one step.

So it isn't that we are not ready to go effective. The votes are in, we have the money, it's really to benefit the estate to bring back the most money, what is the best way to do this effectively and efficiently, and the Committee and we have been working together.

So with all of that, why we're here today on that protocol motion is, one of the things, and I had mentioned this to Your Honor earlier is, we believe at some point there will be need for a joint hearing. Whether that joint hearing is on how we amalgamate all of these entities, Canadian and U.S. and the tax steps, or even how we take just one step, for example, that InterTan Inc., we think will be dismissed under all scenarios, the liabilities assumed by InterTan Canada, we think Your Honor will want to feel comfortable that that's an appropriate step as well as Judge Morawetz in Canada will want to know that. And we'll put on evidence as to why there are no liabilities, it's not going to increase anybody's liabilities, it's not going to harm anybody. That step will be consistent regardless of whether we do the big amalgamation or we do it in piecemeal.

So what we did was talk to the Canadian counsel about a protocol. And I will say, honestly, unbeknownst to us on Monday, I guess, the Canadian counsel went and got it approved by Judge Morawetz. We had thought we were going to coordinate a little bit better, but we frankly didn't get that. We then gave it to the Committee, we gave it to the U.S. Trustee, and we filed a motion today for approval from Your Honor for that protocol. We see it as, it has already been approved by Judge Morawetz, not that that should bind Your Honor to feel compelled to enter an order today, but we do think it is purely

procedural in nature. It has the consent and support I should say, of the Creditors' Committee. The U.S. Trustee has reviewed and to the extent we gave him time to review, which was really only this morning, he said that he didn't have any objections to it.

So I sort of throw myself on your mercy as to whether one, Your Honor would be prepared to approve the protocol, and then without further notice to other parties. Or it would be better to ask Your Honor to approve the protocol subject to what I'll call a ten-day negative notice on all creditors if that were necessary. Again, we do believe that relief is purely procedural. The rush is, if we get through all the rulings and the permutations that I discussed, we would love to be back here on May 11th regarding, or whatever day Your Honor and Judge Morawetz could have a joint hearing, on whatever the corporate procedural step we take next with as the predecessor to confirmation. That step would have to be before confirmation and it will at least be a motion to dismiss InterTan and let it, because Canada doesn't have the merger law. We can't just simply merge InterTan Inc., into Intertan Canada. So the way we've seen it is, InterTan Canada will assume the liabilities of InterTan Inc., which we believe will not be material because we've done that work. And then we'd be seeking to dismiss InterTan Inc., out of the bankruptcy case and then dissolve it. And that's one step that's common to all

of the scenarios that we looked at. And that would be where we see a protocol being necessary with respect to that hearing.

I would note, again, there was conversation with myself and the Committee this morning that we may need future hearings with respect to protocol, and this may actually need to be amended at some subsequent time, so we're really seeing the protocol is only this very small period of time for that particular hearing. Nothing more. We don't think it affects the rights of creditors, nor do we think that it's necessary to have a broader notice, so I leave it to Your Honor's comfort with respect to that notice.

Again, the Committee has reviewed it, it has been of a form that has been approved, I think in this district, by another Judge, as well as in other districts. So we think it's fairly standard and it's more just to lay the foundation for whatever the next step is, and hopefully that's May 11th, May 20th, and it gets us that little step closer to confirmation, which we're still hopeful will be June 8th. I don't know if Mr. Feinstein, who's on the line, wants to add anything.

THE COURT: Mr. Feinstein, do you wish to weigh in on this?

MR. FEINSTEIN: Very briefly, Your Honor. First, thank you for hearing me by phone. We're trying where we can to conserve expense. I won't belabor the point about the history of how we got here except to say that the Canadian and

now the French issue are complex. They're gaiting items for us to get to confirmation on a basis that would be tax efficient, and we're talking about a material amount of money that could be lost if the matter isn't resolved in the best way possible. And we've been working very hard to try to peel back the layers of complexity and get to the root of the issues and to get them resolved. We are hopeful, I think even confident at this point that we can get to plan confirmation come the new adjourn date in June. And in the runup to that, it's quite likely that we would need to employ the protocol to get Canadian issues resolved, and it's an evolving discussion, but I think once everybody who's involved, which includes the Committee, the U.S. debtor, the Canadian debtor, the monitor and the CRA are all on the same page, we would want to move expeditiously. So we very much support entry of the protocol.

As Mr. Galardi mentioned, we might want to amend it at some point to the extent that we can't resolve all the pieces of the Canadian and French puzzle pre-effective date. This will fall to the lap of the liquidating trustee. The amendment would be to add him to the process, but that's for another day.

For today though, we reviewed the protocol that was entered in Canada, we very much support prompt entry of the protocol in the U.S. and that's all I have to add. Thank you.

THE COURT: Thank you very much. Does any other

party wish to be heard?

(No audible response)

THE COURT: All right. Mr. Galardi, I had just a couple of questions, and it's really for my lack of experience with the protocol that perhaps you could just explain to me how it works. The first had to do with Paragraph 15, which is the recognition of the stay proceedings. And my question is, what does that mean?

MR. GALARDI: That's in the Canadian proceedings, correct, Your Honor?

THE COURT: Yes. It says the U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian debtors and their property under the CCAA and the CCAA initial order. Does that mean that a party would have, if there was a -- a party would have the right to come into this court and ask me to enforce the stay that the Canadian Court has issued?

MR. GALARDI: I think that's correct, Your Honor, or visa versa. And generally --

THE COURT: I see that it works both ways in the proceeding paragraph.

MR. GALARDI: -- right. And my understanding is, one, the stay is discretionary, it's not the same as the statutory under our law where you file a case that stays there.

THE COURT: It's more like the old act.

MR. GALARDI: The Canadians have to go in on a regular basis to have to extend the stay, and I think they do so recently. So I think this is that we too and the United States will recognize that there is a stay. We're not going to try to overreach. Again, it's to protect their assets in their dominion, which include what we're talking about here, the cash that is currently sitting in the Canadian entities. And I just think it's a protection there. I don't think Your Honor has the jurisdiction to lift that stay, but that you wouldn't take any steps, obviously, in violation of that stay, and that's my understanding of that paragraph.

THE COURT: But that I would be able to enforce that stay.

MR. GALARDI: That is correct.

THE COURT: Okay.

MR. GALARDI: And that you would stop creditors here from going up there to do that as well.

THE COURT: And as a matter of comity it would probably be the law in any event.

MR. GALARDI: Correct.

THE COURT: All right, very good. The second question I had, and this was just more for clarification, I'm familiar with the ABI guidelines, but from an academic standpoint. I've never been involved with them, but I've read them and am familiar with them from that standpoint. And the

guidelines indicate -- well, let me just tell you the questions. Paragraph 11(a) -- and this is to harmonize, you know, the proceedings and such -- it says that the U.S. Court and the Canadian Court may communicate with one another with or without counsel present with respect to any procedural or substantive matter relating to any of the steps required to implement the equity distribution. And that's pretty clear, I understand what that means. But the guidelines, the ABI guidelines suggest that if that is going to happen, Guideline 7(b) requires that the communications be recorded and then so that they could be later transcribed. Does that mean that if there's any telephone conversation or something of that between the two Courts that we're going to have to record these and make sure we have a transcript available?

MR. GALARDI: One, I've never had any Judges do that in their conversations.

THE COURT: I've never done that, that's why I'm asking.

MR. GALARDI: And two, I didn't understand it that way. I thought it was if there were going to be proceedings jointly between the parties with other parties present, that you want it on the record, you had that right. That's not at all what we intended here. I've often had Judges take all the argument, go back, and indeed, with Judge Morawetz and Judge Gross, then confer. I never expected those to be recorded so

that you could have a record of them, that was never my understanding.

THE COURT: That was my concern. Because that would be sort of how I would contemplate it happening so that we're not both expounding at the same time, perhaps differently.

MR. GALARDI: Exactly. And that's my understanding. And it's just like your deliberations with your clerks, but this is an other judge to come to a joint ruling. That was never anything, and I actually don't understand the ABI part of it, and that's probably why our part says you can go do that and not have to record in essence, and that would be my implication.

THE COURT: Okay. And you do say that in another place where there's any inconsistency that the protocol you've established controls.

MR. GALARDI: Right. And I think that's what that paragraph's origin has been, and that's always been my experience with joint proceedings.

THE COURT: All right, very good. Those were the only two questions I had. I'm fully in favor of implementing a procedural protocol in this case. I think that the efficiencies that will be gained are tremendous and I'm all in favor of doing that. And so the Court -- and I've been through this, I have to admit, hurriedly, so but I did have an opportunity to go through the motion and see what you were --

and review the protocol, so I'm comfortable with that.

And I'm also comfortable that it is purely procedural, and so I'm not concerned with regard to the notice issue. And I understand why you just filed this given the proceedings in the Canadian court on Monday, that makes sense. So I am inclined to approve the protocol and grant your motion.

MR. GALARDI: Thank you, Your Honor.

THE COURT: And so I will ask you to submit an order to that effect. I don't think we need to give ten days negative notice or anything along those lines.

MR. GALARDI: I appreciate it. It will be on the docket, and if anybody raises concerns, we'll obviously address those concerns, Your Honor. And again, we gave it to Mr. VanArsdale shortly before the hearing, maybe a few hours. If he has concerns we will address them. I will also just add for comfort levels, I know Judge Morawetz has had this a little bit longer than Your Honor and also has had a similar protocol in a couple cases that I've been involved in in Delaware, so I know he's probably reviewed it well and is familiar with the protocol and I take comfort from that as well with the monitor having reviewed it.

THE COURT: Well, as long as he's comfortable with it, that's --

MR. GALARDI: I didn't say that far, but I appreciate it.

THE COURT: That's good. One of the things that occurs to me as more of a practical matter than anything else, and that is just coordinating how we conduct this joint hearing. Obviously I need to get our IT personnel in touch with yours as well as the Canadian Court's and such. I've been in touch with the head of our IT department here, his name is Carl Mosca, and you can get his contact information from the courtroom deputy when we're done, or my law clerk, either one, when we're done here today. And he in fact will be looking for your phone call, because I've alerted him to the fact that this was going to be happening. I know he's already been in touch with the Delaware Court to see how they do things there and that sort of thing. So he's told me that it's all possible, which is a good thing.

MR. GALARDI: That's a positive.

THE COURT: But it does need coordination. So, you know, and so the sooner we get those people talking to each other probably the better.

MR. GALARDI: Okay. Either, again, I won't understand it anyway, so either I will make a call or Mr. Foley or somebody from his office will try to coordinate this and we'll make sure that whenever we're going to ask for the hearing, they'll be prepared. The other practical issue is, the way we've left it with our Canadian counsel is we have given Judge Morawetz your contact information so that once we

all come to an agreement that now is the time to have a hearing, again, you have set omnibus dates, I don't think they have. Whether those dates work with his schedule or not we'll work that. But we'll try to coordinate that, and I'm sure he will give Your Honor a call to see what days work and times work for you for that purpose.

THE COURT: Most certainly then. And that makes good sense. You say you're going to try to shoot for right around the May 11th timetable?

MR. GALARDI: Well, again, depending upon the outcome of the next step with the CRA and that, our ideal time would be May 11th. I only use that because you have a fixed date. If there's an earlier date or we can do it and give people comfortable, adequate notice for what we're doing, but that would be the ideal thing. Again, the real deadline as I usually do in these cases, is working backwards. What we really are shooting for is that June 8th confirmation date, and we know this hearing should be before that, because it's the first step in the dismissal before we go. So somewhere anytime in that period we'll try to coordinate and then we'll again coordinate through Mr. Foley and your office and Judge Morawetz's office as to what's mutually convenient for Your two Honors.

THE COURT: All right, very good.

MR. GALARDI: Thank you, Your Honor. If I may be

excused for the day?

THE COURT: You may. Thank you.

MR. GALARDI: Thank you.

MR. FOLEY: Thank you, Your Honor. Doug Foley on behalf of the debtors. I'm just going back to the agenda, Your Honor. There are 22 items on the agenda. There's only one matter that is contested that will be going forward. That's Item Number 5, which is the Ryan motion for reconsideration. But before we get to that, Your Honor, if we could go through the other items. The Item Number 1 is the motion by John Raleigh. I'm pleased to report to the Court that we've completely resolved the motion and the underlying claim and will be filing a stipulation with respect to that shortly.

With respect to Item Number 2, Your Honor, this is the Schimenti 2004 motion. I believe this motion is now moot, but I'm waiting for confirmation from Mr. Perkins with respect to that. So until I get confirmation of that, we'd ask that matter be adjourned to the May 11th date at ten.

THE COURT: All right.

MR. FOLEY: With respect to Items Number 3 and 4, Your Honor, these are the Madcow motions. One for the administrative claim under 503(b)(1) and the motion under 503(b)(9). We had business contacts coordinating with them to reconcile the amounts of these claims and they've requested that both of their motions be adjourned until the May 20th

hearing date at ten.

THE COURT: All right.

MR. FOLEY: Your Honor, Item Number 6 on the agenda is the 23rd omnibus objection with respect to the Vonage Marketing claim, that has been resolved and can be removed from the docket.

Item Number 7 on the agenda, Your Honor, is notice of hearing on the 57th omnibus objection -- and I'm just checking my notes on that one -- this is Snell Acoustics, we have resolved everything with Snell Acoustics, Your Honor, and that can be removed from the docket.

Item Number 8, again, is the 58th omnibus objection, which also covered the Snell Acoustics claim. Again, that's been resolved and can be removed from the docket.

Item Number 9, Your Honor, is the 34th omnibus objection to claims and that matter has been resolved with respect to some of the matters, but Audiovox we're still working on, and they've requested and the rest of the unresolved matters we're adjourning for status until the May 20th hearing date at ten.

Item Number 10 on the agenda, Your Honor, is the 50th omnibus objection to claims. This also includes the Audiovox claim and similarly these are being adjourned for status until the May 20th hearing date at ten.

Item Number 11, Your Honor, is the Archos' motion for

reconsideration with respect to the order on the 48th omnibus objection to claim. They have requested, we're working with them to try to resolve the matter. An adjournment until the May 11th hearing date at ten.

I'll just skip over Items 12 through 19, Your Honor. Mr. Fredericks and Ms. Boehme will be addressing those.

Item Number 20, Your Honor, this is the adversary proceeding complaint against LG. We're working to try to resolve all their claims. As Your Honor is aware, they're one of the appellants with respect to the 502(t) ruling. We prefer to adjourn the pretrial conference and not enter a scheduling order at this time, but rather adjourn the pretrial conference until June 8th at ten, Your Honor.

With respect to Item Number 21, this is our adversary proceeding complaint against United States Debt Recovery as well as Signature. This one, Your Honor, we're not prepared to request the Court to enter a pretrial scheduling order at this point because Signature has defaulted. We had filed a motion asking Your Honor to enter a default judgment against Signature. That has been set for hearing on May 11th. And we have also resolved the underlying issues with U.S. Debt Recovery. That was one of the appellants that we resolved. So there may not be a need for the Court to enter an initial pretrial conference, but at this point it probably makes sense depending on how Your Honor rules on the default motion to

adjourn the request for a pretrial conference until May 11th at ten.

THE COURT: All right. It will be adjourned to the 11th.

MR. FOLEY: Your Honor, Item Number 22, this is our complaint against PNY Technologies. Again, we're trying to resolve the matter with them as well, similar to LG and would request that that initial pretrial conference be adjourned until the June 8th hearing date at ten.

THE COURT: All right, June 8th.

MR. FOLEY: And Mr. Fredericks will address Items 12 through 14, which is our fifth omnibus objection to claims that involves the goods, services issue.

MR. FREDERICKS: Good morning, Your Honor.

THE COURT: It's actually afternoon.

MR. FREDERICKS: Good afternoon. Thank you. I apologize. Ian Fredericks with Skadden Arps for the record. With respect to Matter Number 12, this was a notice to go forward on certain claims, Minor Fleet Management and Vector Security. We have reached agreements in principle and I think maybe since this agenda has been filed we've actually finalized the settlement agreements with respect to those two. So those two are resolved.

THE COURT: All right, excellent.

MR. FREDERICKS: With respect to the next matter,

this is both -- it's also, it's either the fifth or the sixth omnibus objection, this one related to U.S. Signs and Schimenti Construction. We have submitted a proposed form of order sustaining the objection with respect to Schimenti. With respect to U.S. Signs, we are currently engaging in discovery. We had propounded discovery with respect to the goods issue. They have done likewise. In addition to that, we also plan to supplement the objection to address the received issue, when the "goods" were received, and we've propounded discovery on that as well, so for the time being, we propose just moving the status hearing over to the May 20 hearing and giving the Court an update at that point about whether or not this matter has been resolved or is going to need to have it set for an evidentiary hearing.

THE COURT: You wish to be heard?

MR. HUTSON: Yes, Your Honor. Richard Hutson for the record for U.S. Signs. And Mr. Fredericks is accurate. We're hoping to resolve this, but we have outstanding discovery, so I think May 20th is a good time to set a status.

THE COURT: All right, very good. So we'll set that down for May 20.

MR. FREDERICKS: Thank you, Your Honor. The next matter, Matter Number 15, this was -- I skipped on, I'm sorry. Matter 14, this is a notice with respect to Retail MDS. This was another goods/non-goods issues. WE had been advised that

Retail MDS would not be appearing at the hearing and what we proceed -- we'd ask the Court to proceed to go forward and rule that this was a non-goods transaction that services predominated and goods were incidental.

THE COURT: All right. Do I have to have some evidence on that? Can you proffer some evidence so I can make the ruling?

MR. FREDERICKS: Certainly, Your Honor. It's actually their burden as the administrative claimant. But if you'd like us to put on evidence, I'm happy to proffer the testimony of Ms. Bradshaw who is in the courtroom.

THE COURT: You're exactly right. It is their burden. I'm sorry. I was --

MR. FREDERICKS: It's not a problem, Your Honor. I know it gets confusing about the way we set these things up a little bit.

THE COURT: No, I was just going through and I've got it right here, and it is certainly their burden, and they're not here to go forward on it. And I've reviewed their response and the documentation that was attached to it, and it appeared to me there was not even a close call, that it was services that were being provided under the -- my prior ruling that none of the goods would be recoverable. So yes, I will grant your request and that will be denied.

MR. FREDERICKS: Thank you. We'll submit an order re

classifying the claim to a general, unsecured claim.

THE COURT: That would be appropriate. Thank you.

MR. FREDERICKS: Thank you, Your Honor. I believe there are only -- and this isn't on the agenda -- I believe there are only two claims left after this that will be subject to the fifth and sixth omni -- in addition to U.S. Signs, so three. U.S. Signs I believe it's Graphic Communications and Performance Printing. Graphic Communications, we are trying to reach an agreement on stipulated facts, and would then just present briefing to the Court. Again, that one we are going to supplement and do goods/non-goods and also the received issue. And if we can have stipulated facts to present to the Court, that's where we're trying to get to so that Your Honor doesn't have to have an evidentiary hearing. We're tentatively thinking that if it works for the Court using June 8th as the hearing for oral argument, if we do need to have evidence, we'll probably use a different hearing given that that may be confirmation.

THE COURT: All right.

MR. FREDERICKS: And then Performance Printing, we are working to try to resolve that claim and hopeful that we can reach a consensual resolution on that one.

THE COURT: All right, very good.

MR. FREDERICKS: For the remainder of the matters, I believe Ms. Boehme will be handling it. Thank you, Your Honor.

THE COURT: Thank you.

MS. BOEHME: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. BOEHME: Sarah Boehme on behalf of the debtors. Item 15 on the agenda is the debtors' 19th omnibus objection. We're here today for a status hearing solely with respect to Arboretum of South Barrington, LLC, Inland U.S. Management, LLC, and Inland Continental Property Management Corporation Marketing, LLC. We are trying to work through these, they are both landlord claims that were filed as secured that we seek to reclassify to general unsecured.

With respect to Arboretum of South Barrington, LLC, we'd like to adjourn the status on that to May 20th for further status. Since it involves a landlord claim with multiple pieces to it, we're trying to substantively resolve the entire claim rather than handle it piecemeal. With respect to the three Inland entities, we are prepared to go forward on the merits with that one on May 20th.

THE COURT: All right.

MS. BOEHME: To the extent that it's not resolved prior to that time.

THE COURT: Very good. Mr. Mueller?

MR. MUELLER: Good afternoon, Your Honor. Mike Mueller on behalf of Inland. Ms. Boehme's representations are correct. We are trying to resolve the claims' objections. The

basis for the secured claims is set off rights with respect to reconciliations. We're trying to work through to see if there are even any reconciliations that need to be made. So hopefully we'll have it resolved prior to May 20th.

THE COURT: All right, that will be our hope.

MR. MUELLER: Thank you, Your Honor.

MS. BOEHME: Item 16 on the agenda is the debtors' 20th omnibus objection. I'm happy to report that I have submitted an order resolving all but one of these claims. Today we were here to go forward with respect to a status hearing on Averatec/Trigem USA Inc., and Paramount Home Entertainment. We did resolve the Paramount Home Entertainment objection as part of the order that was submitted. So today we only need to go forward with a status hearing on Averatec/Trigem USA.

THE COURT: All right.

MS. BOEHME: This claimant also is subject to the 48th omnibus objection, which is also set for status. For this particular objection it's with respect to goods received outside of the 20 days. We have provided them information documenting that these goods were received at 20 days and they're just having trouble contacting with their client to resolve this piece of it as opposed to the other piece of it with the setoff and other issues raised at omni 48. But we're hopeful that we will be able to enter an order prior to this.

But at this time we will go ahead and adjourn the status hearing with respect to this one to May 20th.

THE COURT: So that will be another status on May 20th as opposed to going forward?

MS. BOEHME: Yes. Yes.

THE COURT: All right.

MS. BOEHME: Item 17 on the agenda is the debtors' 37th omnibus objection that deals with a reduction of personal property tax claims. This is one where the debtors had hired a tax consultant to do a personal property tax evaluation, and nearly every taxing authority responded with questions regarding that evaluation process. So the debtors have prepared a motion for summary judgment on some threshold legal issues, one of them being abstention and whether or not the Court has authority to rule on personal -- handle these personal property tax matters under Section 505 of the Bankruptcy Code. We anticipate that the summary judgment motion will be filed today and that all of these will be heard with respect to that legal issue at the May 20th hearing.

THE COURT: If the Court doesn't have the jurisdiction to resolve those, who does?

MS. BOEHME: The individual taxing authorities' jurisdictions.

THE COURT: Okay.

MS. BOEHME: According to the individual taxing

authorities who responded.

THE COURT: I think I understand. All right.

MS. BOEHME: Item 18 on the agenda is the debtors' 48th omnibus objection. This was set for a status hearing with respect to Averatec/Trigem. Again, we are working with them in connection with the Omnibus 20 objection and we have with respect to Omni 48, propounded discovery and they have done the same. So we would request that the status hearing on this be set over for May 20th.

THE COURT: Is this a different claim that they have filed that is the subject of your 20th omnibus objection or is this just a different theory for objecting to a similar claim?

MS. BOEHME: This is a different -- Your Honor, Omni 48 basically takes into account what we're seeking to do in Omni 20, which is reclassify a portion of their 503(b)(9) claim, and then offset money that's owed to the debtor against their 503(b)(9) claim.

THE COURT: All right.

MS. BOEHME: So we're trying to figure out in Omni 20 what their 503(b)(9) claim is and then figure out in Omni 48 the amount that we're going to set off against which portion of which claim.

THE COURT: All right, I understand.

MS. BOEHME: Item 19 on the agenda is the debtors' 70th omnibus objection. This is on for an initial status. The

objection included 113 claims for approximately 8.1 million. We did receive several responses, most of which were set forth on Exhibit A, although we did receive some informal responses that were not set forth -- excuse me -- on Exhibit A. At this time we would ask the Court to enter an order granting the disallowance of the claims for any claimant that did not file a response and for any claimant that did file a response we will set those for status on May 20th.

THE COURT: All right, that relief will be granted.

MS. BOEHME: Thank you, Your Honor. That concludes the claims with the only item being left being the contested item Number 5 with respect to Ryan.

THE COURT: All right.

MR. FOLEY: Your Honor, Doug Foley on behalf of the debtors. Matter Number 5 is Ryan's motion for reconsideration of Your Honor's ruling on March 8th with respect to their motion to compel us to assume prepetition professional services contract and our motion to reject it. Your Honor entered an order rejecting it. They've moved to reconsider that. We obviously think the Court should deny the motion, it has nothing to do with the claim issue. We can update the Court on what they have done with respect to the claims.

They have filed a couple of claims, administrative claims, alleging administrative priority. We'll deal with those in the ordinary course. We'll object to them at some

point because it involves prepetition services. And they've also filed a complaint recently to seek declaratory judgment with respect to the status of their claims as well as some other relief. But the issue today is simply on the motion to reconsider the 365 issue on assumption or rejection and we don't believe they can meet the standard that's under Your Honor's precedent that was recently affirmed by Judge Payne. But we'll defer to the movants.

THE COURT: All right.

MR. MARINO: Good afternoon, Your Honor. I'm Robert Marino from the Law Firm of Redmon, Peyton and Braswell serving as local counsel for Ryan Inc., formerly known as Ryan and Company, Inc. And I have with me today Bruce W. Akerly of the law firm of --

THE COURT: I'm sorry, the last name again?

MR. MARINO: -- Akerly.

THE COURT: Akerly, that's right. I heard him by phone last time.

MR. MARINO: Yes, that's correct. And as you heard me by phone last time. He's with the firm of Cantey Hanger in Dallas, Texas, and he is the lead counsel and he's been previously admitted pro hac vice and I'll let Mr. Akerly address the Court.

THE COURT: Thank you.

MR. MARINO: Thank you, Your Honor.

THE COURT: Mr. Akerly, welcome to the court.

MR. AKERLY: Thank you very much, Your Honor. Just for the record, Bruce Akerly on behalf of Ryan Inc., the movant here today. And I appreciate the Court hearing me this afternoon.

Just as an administrative matter, we did designate some exhibits, but I'll let the Court know that there's 14. I think 13 of them are all pleadings or things that are of record, but I wanted them in kind of a notebook so as I talk a little bit the Court can refer to them. Number 14 is actually a copy of the actual agreement that's in dispute or at issue with respect to the rejection issue.

THE COURT: All right.

MR. AKERLY: May I approach, Your Honor?

THE COURT: You can hand them to the courtroom security officer.

MR. AKERLY: For the record, Your Honor, I have --

THE COURT: And have these been made available to counsel for the debtor?

MR. AKERLY: Yes, I was just going to say that, Your Honor, thank you. We have made a set of these available to counsel today and they have them.

THE COURT: All right.

MR. AKERLY: If I may, Your Honor, we are here, as Mr. Foley has correctly stated, to ask the Court to reconsider

two orders. In your notebook these orders are under Exhibits 9 and 10. I guess as an administrative matter, maybe I ought to go ahead and move for admission of these exhibits if that's possible as I refer to them.

THE COURT: Any objections, Mr. Foley?

MR. FOLEY: Your Honor, 13 of the 14 exhibits are pleadings from the Court's docket. Either orders or our motion. Exhibit Number 14 is the copy of the contract that we rejected which was attached to our motion. I don't know that the Court needs evidence at this point. We would like to make an argument that notwithstanding -- we don't have any objections to the exhibits, they're all exhibits from the Court's docket, but we think for purposes of this hearing on our motion to reconsider, we're not exactly sure that it makes sense to have evidence that all which was available at the hearing that Your Honor held last time.

THE COURT: Okay, well, I'll hear that at the appropriate time, but I'm going to let Mr. Akerly explain to me why I do and let him go. So they're all admitted.

MR. AKERLY: Thank you very much, Your Honor. Eight and nine of the exhibits are the two orders that are before you this afternoon. The first order under eight is the order -- I'm sorry, not eight and nine, nine and ten, Your Honor. Exhibit 9 is the order authorizing the rejection of the executory contracts, a contract with Ryan Inc. That is the

contract that is under Tab 14 in your notebook. Exhibit 10 is the order denying Ryan's motion to compel assumption of that contract. So what you had in front of you back on, I believe, March 8th at the -- well, the hearing in which we appeared by telephone and Mr. Foley appeared here in person was you had two motions in front of you at that time, the debtors' motion to reject the executory contract and Ryan's motion to assume. The Court then entered separate orders on those and we're asking the Court to reconsider those at this time.

We did file before the Court, and it is under Tab 11, Your Honor, our verified motion to reconsider. And the reason I verified it was I just wanted to avoid the necessity of putting on specific evidence. Most of the facts are just proofing up the pleadings and Ryan's understanding with respect to the transactions that have transpired and resulted in the issuance of the order.

If I may take the Court back just a little bit with respect to what has transpired here and how we sort of got here from there, just real briefly. Ryan entered into this agreement prepetition, the agreement that's under Tab 14. Ryan, at the time of the bankruptcy, Ryan was continuing to monitor Hawaii import tax payment issues at the state level, but wasn't doing much. I mean, at the state level there was an appeal -- well, a denial of a tax refund request that had been undertaken by Ryan and at the time the bankruptcy was filed

that appeal of that denial had been put on hold. And so Ryan continued, basically just continued to monitor the process throughout the bankruptcy.

On September 29th, the debtor filed its joint, it's first amended joint plan, and in that plan, it's essentially, with respect to executory contracts, it's a default plan which basically says if we haven't assumed your executory contract it's going to be deemed rejected. Based on that, we filed an objection to confirmation, Your Honor, which is under Tab, I believe it's Tab 4. No, I'm sorry, Your Honor, it's under Tab 6 or 7, Your Honor. But in any event, we objected there.

We also filed a motion to compel the debtor to assume the contract. And the reason we did this was, normally we would file a motion to compel the debtor to assume or reject.

THE COURT: Right.

MR. AKERLY: Have the debtor make a decision. The debtor here essentially in the plan was indicating its intentions. They had informed us that they were going to not assume Ryan's contract, but were going to reject it as part of confirmation process. And so we thought, well, rather, obviously rather than wait for the confirmation process, we wanted to have, to force the issue, essentially, filed a motion to compel assumption.

And then we begin the dialogue with the parties, and both parties talked extensively about how to resolve the issues

between the parties with respect to this contract. And just to give the Court a little bit of background, there's an appeal pending in the State of Hawaii that involves Comp USA. And this particular import tax issue, I don't even begin to understand all of the intricacies of it, but this particular issue is heading up in the State Court system in Hawaii in connection with Comp USA. Comp USA is actually a client of Ryan's. That is actually Ryan's appeal that's going up. And as part of that process, Ryan had developed, essentially, a mechanism to, would request at the State of Hawaii level, you know, refunds with respect to import tax issues and it involves an interpretation of state law and different import inventories and analysis. And that issue is before the State Supreme Court.

And Ryan then came to Circuit City and informed Circuit City that they might benefit from this, from what's happening in the State of Hawaii. And before they entered into this engagement, Ryan said to Circuit City essentially is, we have this strategy, but we need you to enter into the engagement. They entered into the engagement and then they involved the strategy, which essentially is the same strategy that is going up for the -- so they started down that route and then Circuit City filed bankruptcy.

Now, Circuit City, after they filed their plan and after we objected to the plan and then we filed the motion to

assume, we engaged in discussions with counsel for Circuit City with respect to whether or not they would entertain an offer by Ryan to purchase the claim. We proposed a purchase price. They then responded to the purchase price three days before the March 8th, hearing.

Now, again, prior to that time, they also moved to reject the contract. So not only did you have the plan essentially doing a default rejection, but now you had actually a formal motion to reject on the part of the debtor, which was buried within an omnibus motion to reject that had to do with employment contracts. So you had all these, you know, a host of employment contracts and then you had Ryan's contract, which has nothing to do with employment. But they did move to reject, and so we responded. We responded to that motion to reject. We posed that motion to reject. They then opposed our motion to assume which brought the two contested matters sort of ready for submission to the Court. But during that time, the parties continued to dialogue.

As I pointed out in my verified motion, Your Honor, it was Ryan's understanding, because this matter had been passed numerous time on the docket, most of the times it had been passed to coincide with confirmation hearings that were -- confirmation settings that were before the Court and the continued dialogue between the counsel, that it was Ryan's understanding and believe, and I understand that, you know, the

debtor has, the debtor definitely has a different viewpoint.

And I'm not representing to the Court that with respect to the hearing on March 8th that the debtor said to us, that's not going to be an evidentiary hearing. I don't want to misrepresent to the Court, and I know Mr. Foley had had some concerns about, you know, our motion somehow implying that the debtor, the debtors' counsel had somehow said that that March 8th hearing wasn't going to be an evidentiary hearing. Don't misunderstand me. What I'm saying is, from our perspective, notwithstanding the agenda that went up before the Court, we believed and understood that that hearing was not going to be evidentiary, that it was essentially going to be talking about legal issues, and then if evidence was going to be necessitated that it would be set down for an evidentiary hearing.

And to back this up, it's not just my belief or Mr. Marino's belief or understanding, but we then got permission to attend the hearing by telephone, and in our motion to appear by telephone, as I've set out, the actual motion is in the exhibits, but as I set out in my motion to reconsider, in that motion to appear by phone, we state, the parties agree that the issues presented at the March 8th omnibus hearing with respect to Ryan's plan objection, the motion to compel and the motion to reject would be confined to legal argument, with the understanding that if any evidentiary issues that they will be, if there are any evidentiary issues that they will be deferred

to another date subject to entry of a scheduling order by the Court.

Please understand, that's my understanding of what the parties' understanding was. Again, I don't want to mislead the Court, but it was very clear to us, okay, that we were going to be able to appear by phone and present this argument by phone, legal argument. If there was any legal argument we would be making those assertions. Then if there was a necessity for evidence, we were going to set it down. Otherwise I would never have been, I would never have appeared by phone. I would have had Mr. Neil Fett, who's here from Ryan, I would have had him here for that hearing, Your Honor.

Now, this is really important, because when you look at the flip side, okay, there were two motions before the Court on the eighth, okay? My motion to assume, and if you remember, Your Honor, we have the transcript here, if you remember, one of the legal issues you raised, Your Honor, was, you know, can a creditor move to compel the assumption, okay, and that's the kind of issue we contemplated would come up is, you know, are these pleadings asserting proper legal rights as between the parties?

The other motion, there were two motions, the other motion was there motion to reject. Now, obviously we have the burden on our motion and the debtor has the motion on their motion. So when we got to the hearing, and you can look at the

transcript, we appeared by phone, and the Court raised those issues, quite fine, that was fine, but the Court took the business judgment conclusions that were made in the omnibus motion to reject as final, essentially, and they were not final, they were contested. Once we contested the motion to reject, that put the debtor to its burden to put on evidence with respect to business judgment and whether or not this particular contract had no value to the Court -- I'm sorry -- no value to the estate, was a burden on the estate. And at that hearing there was no evidence proffered, there were no witnesses or exhibit lists filed, the motion to reject, the omnibus motion to reject was not followed by a declaration or an affidavit or any verification. Mr. Foley, as you can see from the transcript, Mr. Foley never offered to put on any evidence to support his motion.

And no disrespect to the Court, the Court considered the motion in front of it and made a ruling. We respectfully believe that the Court did not -- should have considered evidence. Okay? The Court could have said to me, Mr. Akerly, you have the burden on your motion to assume. Okay? And where's you evidence? You know, and I would have said, well, Your Honor, I didn't know this was going to be an evidentiary hearing, that's why I'm on the phone. That was my burden though. Okay? But what the Court didn't do was say, okay, Mr. Foley, your motion to reject, it is opposed by Mr. Akerly,

where's your evidence? And Mr. Foley in his response to his motion to reconsider says, well, Mr. Akerly could have cross examined. There were no witnesses, there was no proffer. There was no proffer made.

So my point with respect to this aspect of the motion to reconsider is, the Court should, in the interest of fairness, in the interest of justice is hold the debtor to their burden. To at least demonstrate to the Court that this agreement is lacking in value to the bankruptcy estate, this agreement is a burden to the bankruptcy estate.

We likewise would like to put on evidence to show the Court that this agreement has considerable value to bankruptcy. It's a very unique arrangement, very unique contract between the parties, and we would like the opportunity to put the evidence on to show the unique relationship between my client and the debtor. And not just the debtor, but the debtors' successor is going to benefit from this contract to the tune of --

THE COURT: Let's assume that you're right --

MR. AKERLY: Yes, Your Honor.

THE COURT: -- and that the contract has huge benefit to the estate, all right? That the debtor says, you know, in exercise of our business judgment, we want to reject it anyway. Aren't they entitled to reject a contract?

MR. AKERLY: I don't think they're entitled to

absolute, just to say in our business judgment we reject. They have to have some judgment. They have to have something that backs that up.

THE COURT: Well, I have to find that their business judgment is reasonable.

MR. AKERLY: There you go.

THE COURT: But it's got to be -- but so long as they've got reason --

MR. AKERLY: Yes.

THE COURT: -- for exercising the business judgment, isn't that the controlling issue?

MR. AKERLY: How I understand the cases, Your Honor, is that if they go forward with a certain amount of evidence on business judgment, the burden then shifts to me to demonstrate that this is a valuable contract to the estate. That this contract is not a burden and has value. This particular contract, for example, it is a contingent fee contract, there's no, absolutely no cost to the estate. If there is a recovery of a tax refund, then we get a fee. The estate has no, there's no downside, no economic downside to the estate with respect to this contract.

Our client has the unique relationship with the State of Hawaii. Our client has undertaken all of the analysis. It was our client's strategy from the very beginning with respect to this refund. In that contract there is a confidentiality

agreement, and that's the basis for our complaint that we filed for declaratory and injunctive relief is that that strategy, the fruit of that strategy, the whole argument that's being made before the State of Hawaii that was being made by Ryan cannot be used by Circuit City.

And my point being is, there being no downside to the estate, what is the problem here in terms of allowing Ryan to continue what it was doing under that contract, get the fruit of its labor, the estate gains six to $800,000. Without Ryan there, we arguably have a contractual block to their ability to go forward, which means the estate and the creditors, under the liquidating trust, the creditors will lose out on that recovery, because they can't use our strategy, the fruits of our strategy, our work product, all of that under the terms of the agreement. And that's our point.

What we would hope or we wanted was to have the Court set it down for an evidentiary hearing so the Court could hear this, could hear the witnesses, could see, you know, in the scheme of things, this contract actually is absolutely no burden to the estate. Actually there's an incredible upside. Because if you weigh in the rights that Ryan has under the agreement, you know, in terms of its ability to block the debtor from going forward, then you've got to rule in Ryan's favor.

Now, here's what I would suggest, and I was trying to

do this before the hearing with Mr. Foley is, since we have th complaint for declaratory injunctive relief, what I would request is if the Court were to grant my motion to reconsider is that the Court then consolidate the motion to assume with the complaint, and let's just -- there really isn't much in the way -- there's really no discovery that has to be had, we can have an evidentiary hearing, hear everything and the Court can rule in a very prompt manner.

THE COURT: Okay, well, let's assume that -- well, let's break it down.

MR. AKERLY: Yes, Your Honor, I'm sorry.

THE COURT: Because with regard to the motion to require them to assume the contract.

MR. AKERLY: Yes, Your Honor.

THE COURT: Okay, you've conceded that that was your burden, you didn't present the evidence, so that one's gone it seems to me, isn't it?

MR. AKERLY: Well, respectfully, Your Honor, again, we did not believe that the hearing that was taking place on the eighth was an evidentiary hearing. We believed it was going to be talking about legal issues, you know are these most proper, those kind of -- that's my understanding, that's Ryan's understanding. I know Mr. Foley, I agree, the agenda doesn't say that, the agenda says going forward, I understand. But we believe that it wasn't -- my point being that if the Court

finds that the motion to assume was actually set down for a final hearing, and, you know, sorry, Mr. Akerly, you shouldn't have appeared by phone, you should have been here with witnesses, then you're right. Then that motion, I mean, I didn't put on any evidence.

THE COURT: But you didn't say when you were on the phone, wait a second, Judge, I want to put on some evidence here.

MR. AKERLY: No, but what I said was, I said, I believe in the transcript I said that we would like the opportunity to go forward on the motions. Okay? Neither party filed any witness list, any exhibit list. You know, it just didn't occur to us that that's what was going to happen. We were thinking it was going to be more like a status conference talking about legal issues, talking about are these motions really proper and those kinds of -- that's my understanding. Now, you know, obviously --

THE COURT: The second thing I wanted to ask you is, if I do what you're asking me to do, if this plan gets confirmed on the eighth of June, the plan terms provide for the rejection of the contract, so isn't that going to, you know, moot the whole thing at that point in time? I mean, in other words, aren't the creditors allowed to vote to say that we want to reject these contracts?

MR. AKERLY: The way the plan is drafted now, that's

right, anything not assumed is going to be rejected. We objected to the plan on the very basis that you shouldn't reject Ryan's contract. So it's out there as an objection to confirmation. And we've raised the same issues in our objection to confirmation as we're raising in our response to their motion to reject. My point being is that you can preserve that issue out, you can preserve that -- you can confirm that plan. This is a liquidating Chapter 11. You can confirm that plan and reserve the issue on rejection. If the Court deems the contract rejected, there's no impact. It's gone. Yes, we file a rejection damages claim. They know what our claim's going to be, they can reserve for it, that's fine. If the Court assumes, it's all upside. There's not monetary impact on the creditors, because everything we do is going to result in a monetary recovery from the State of Hawaii ultimately.

Now let me say one other thing, Your Honor, and to make it very clear here about Ryan's role under this contract. If this contract is rejected, all right, either the creditor's liquidating trustee is going to just not do anything, right? Fully aware of it and not do anything, and I don't know if that's a breach of fiduciary duty, but the refund claim's out there. Okay? The State of Hawaii would love the debtor to ignore the claim obviously. But if the liquidating trustee decides to go forward and seek that refund, two things. One

is, we don't think they can use Ryan's work product or Ryan's strategy or the fruit of that strategy. That's protected by the agreement. Even on rejection the agreement doesn't go, that aspect of the agreement doesn't go away.

Second is, the liquidating trustee is going to have to have to hire somebody to prosecute that tax refund. There's no indication that anybody would do that on a contingent basis like Ryan's doing. So that is going to be a burden, that is going to be an economic burden. You have to pay somebody on an hourly basis to prosecute that, whereas Ryan's contract has no burden at all. So I think you could reserve it out.

THE COURT: But that goes back to my other question before that, you know, that the debtor in the exercise of its business judgment could say, wait a second, we do want to hire somebody else to do this because maybe they think on an hourly fee basis that it's going to be less than what the contingency contract is. That's a reasonable business judgment.

MR. AKERLY: Sure. Then let's hear it. Let's hear it. I mean, that's my point. I have not heard that. I have not heard -- the only thing I've heard from the debtors' side is, we don't think it's a valuable contract. And that's what set us down the path of, well, maybe we'll buy it. Okay? And that started us down the path of negotiations. Because all we've heard so far is, we don't think that's a valuable contract. That's crazy. I mean, we're the ones who, Ryan is

the ones who are prosecuting the Comp USA, but we're on the inside, we know the value of this contract. We offered to buy it. The debtor, we couldn't reach an agreement on the price, okay, which anyone on that basis can assume that that means the debtor does believe it has some value, we couldn't reach an agreement.

So the point is, yes, let them come in, that's all we're asking. Let them come in and say, we think we can hire an accounting firm in Hawaii, you know, fifty bucks an hour, to do this. Then the Court also has to consider, you know, can they use the fruit of Ryan's work, the product, in light of the agreement? Are they going to have to start from scratch? And that's kind of the benefit, the cost benefit analysis the Court needs to hear in order to decide whether or not it's appropriate to reject. That's the business judgment we want the Court to be able to consider.

THE COURT: All right. And so the basis for your motion is that under Rule 59(e) which as incorporated by Bankruptcy Rule 9023, that the Court needs to do this to correct a clear error of law and to prevent manifest justice?

MR. AKERLY: Yes, Your Honor. Miscarriage of justice, that's right.

THE COURT: Okay. All right.

MR. AKERLY: Thank you.

THE COURT: Let me hear from Mr. Foley.

MR. FOLEY: Your Honor, setting aside the offense that I've taken at the pleading and the conversation we had prior to the hearing that counsel was not going to stand here and claim that they were somehow misrepresented by me or somebody at my firm, that seems to be the genesis of the argument, that we weren't prepared last time, we want another chance, we want a do over. Whatever the argument is, it doesn't meet the standard, we believe, as we've set forth in the pleadings, that Your Honor cites in the Pollack case (phonetic) and Judge Payne in the affirmance of that case that the Fourth Circuit says you have to apply Rule 59 and motions to reconsider for many a judgment to accommodate an intervening change and controlling law to account for new evidence not available at trial or to correct a clear error of law or prevent manifest injustice. And they appear to be moving under the third prong.

But, Your Honor, again, Mr. Akerly confuses several things. One is he overstates what's going on in Hawaii. What is pending in Hawaii is, we filed an amended tax return seeking a refund that could be, with interest, up as much as $750,000. Right now it's worth nothing, because it's been denied, and the strategy or whatever they claim that they've come up with in the Comp USA case is all public record. They filed pleadings with the Hawaiian Appellate Courts, everything is disclosed. There was a window of time in Hawaii before they changed the

law between 2002 -- 2001 and 2004 where the State of Hawaii was valuing certain inventory that was on an excised tax basis that was imported form the mainland to the Islands. And that's what this relates to, how much of an excise tax do you pay based upon a cost basis of the inventory. What cost basis do you use? Their theory came from this Comp USA case, which is a legal theory and it's public record. There is no, for lack of a better word, special sauce that they gave us. They came in and looked at our screen shots from our financial information and helped us prepare and file amended tax returns. We have no proprietary information, we have no secret book from Ryan on the secrets of Hawaii, you know, tax refunds. All this work was done in 2005 and 2006 and 2007, and it's been percolating up and down through the Hawaii courts, and right now all the taxpayers are at zero.

And this is a prepetition contract for professional services, nothing has been done post-petition. We have no idea what we're going to do with this claim. We may abandon it eventually. But there's nothing to do. We said, if you think this claim is so great and you want to prosecute it, make us an offer. They offered us $25,000 for what could be a $750,000 claim.

MR. AKERLY: Your Honor, objection. Obviously --

MR. FOLEY: You brought up --

MR. AKERLY: -- Federal rules of evidence prohibit

the disclosure of settlement amounts. I mentioned the discussions, the settlement discussions, but I deliberately did not get into the --

THE COURT: I think Mr. Akerly is right and the Court will disregard the amount of any settlement.

MR. FOLEY: That's fine, Your Honor. My point is the value of this claim is what it is. But the point of the matter is, what's before the Court is a motion to reconsider under 365 our business judgment to reject a prepetition professional services contract, because the only alternative of assumption would potentially, we don't know if this claim's ever going to materialize into anything, could potentially elevate a prepetition, general unsecured claim into an administrative claim. That's what's really driving everything here and why Your Honor doesn't need to amend its ruling is because --

THE COURT: Well, that's what I recall from this prior hearing is that what bothered me about assuming this contract or what was really driving this is that if a professional was going to be employed post-petition, that that was something that had to be approved by this Court on application, that I had not approved any post-petition application for any professional and therefore I didn't think it was a contract that could be assumed.

MR. FOLEY: And we agree one hundred percent with Your Honor.

THE COURT: But wasn't that what I said last time?

MR. FOLEY: Yes. That is one of the -- that's one of the issues you addressed. I mean, we listed Ryan as an ordinary course professional to the extent there was any work to be done post-petition, but that would have required them to file an affidavit that they were going to do work. They never file done, because they didn't do any work. This is all prepetition work. And it's not in the fiduciary duty or interest of the estate to assume a contract that would elevate a prepetition, general unsecured claim to an administrative claim. All the work was done. They're in no different situation than anybody else who didn't get paid for prepetition work that they did. The fact that they have a contingency fee contract, the case law is clear. We cited the Hall case, prepetition contingency fee contracts for professional services can be rejected. And the question of what their claim might be is not before the Court today. They have filed two administrative claims and they had filed a complaint to seek declaration of a priority status of their claim. That can all be dealt with another day. This is simply a decision on assumption and rejection. And the Court -- there's no basis for the Court to alter its decision.

THE COURT: Would you address just very briefly, Mr. Akerly's argument that you were required to put on evidence in order to support the business judgment of the debtor that would

allow you to reject the contract?

MR. FOLEY: At the previous hearing, Your Honor, I think Mr. Akerly is correct, I did not use the word proffer, but as Your Honor is aware, Ms. Bradshaw comes to every hearing, and we proffered that it was our business judgment not to do that, not to elevate a prepetition, general unsecured claim for prepetition work under prepetition contract and to the post-petition arena, because there was no work to be done, there was no request to retain them, and that the U.S. -- the plan confirmation, the trustee has to weigh in on what to do with this claim.

And we're not going to make decisions on retaining professionals when this thing has been languishing for years that could tie the trustee's hands. And so we made -- we could always hire Ryan again after we confirm the plan we can negotiate another contract, we could hire somebody else, we could end up selling the claim to Ryan or somebody else, but that was the basis -- it's axiomatic in our view that rejecting this contract was really the only responsible thing that the estate could do.

And to the extent the Court thinks I should turn that into a proffer, I'm glad to proffer Ms. Bradshaw's testimony in that regard. If I didn't use the words proffer on March 8th I apologize to the Court. But again, it was axiomatic in our view that this was the only result, because it's not a contract

that could be assumed.

THE COURT: All right, thank you. Mr. -- I'm sorry, Ms. Beran, you wish to be heard on this?

MS. BERAN: Yes. For the record, Paula Beran as co-counsel for the Official Committee of Unsecured Creditors. I believe Mr. Feinstein may also still be on the line in connection with this. This is something that had been discussed with the Committee and the Committee supported the debtors' position on it, and again today supports the debtors' position and believes that the debtors' request for you to deny the relief requested is the appropriate action.

THE COURT: All right, thank you.

MS. BERAN: Thank you.

THE COURT: All right, I don't see anybody else getting up, so, yes, Mr. Akerly, you can respond.

MR. AKERLY: Really just a minute --

THE COURT: Is this really a dispute, you're just trying to elevate a prepetition claim to administrative status?

MR. AKERLY: No, Your Honor, no. We have not, we are not making -- let me back up. I filed, Ryan filed an administrative claim and then a supplement to administrative claim very early in the case as a prophylactic matter. And Ryan is not making any contention that they have undertaken work, significant work that has been of a resulting benefit to the bankruptcy where you'd have a 503 admin claim. Don't get

me wrong, this is an executory contract. Okay? Nobody's claimed that it's not an executory -- it's an executory contract which has value to the bankruptcy estate which needs -- we think needs to be assumed.

I'm surprised that counsel for the Creditors' Committee is not actually weighing in on our side here in order to preserve the value of this contract for the bankruptcy estate. She wasn't at the hearing on the motion to reject and the motion to assume. She shows up now on the motion to reconsider and I -- my concern is --

THE COURT: How do you know she wasn't there?

MR. AKERLY: Well, I have the transcript, doesn't have her appearance.

THE COURT: She didn't appear at that part of the hearing.

MR. AKERLY: Okay. I guess she can say, Judge, let you know if she was there or not. But, Your Honor, she didn't stand up and try to weigh in on it before the Court ruled. She didn't come before the Court to say, Your Honor, we're weighing in, we've talked about this with the debtor, we're weighing in and we support the debtors' motion to reject. I understand it's a joint plan. And that's fine. I mean, I understand that they're supporting the plan and the plan contemplates rejection.

But my concern is, that doesn't make rejection right.

You need to take evidence on the issue as to whether or not this is satisfactory on the business judgment side. I think everyone's missing the point here, and that is that Ryan has the unique and valuable skills, and it's their strategy, I know Mr. Foley's saying, well, this is all a matter of public record. It's a little more complicated than that. And I have Mr. Fett here who would be testifying on those issues if necessary, but it's much more complicated than that. Ryan is actually prosecuting that Comp USA appeal. We have the unique ability to be victorious on that contract. This contract goes away, all of the fruits of our labor go away under the contract.

THE COURT: Okay. Just assuming you're correct in all that. Let's focus on the legal issue. What is the manifest injustice that I need to prevent or what is the clear error of law that I committed last time when we had the hearing?

MR. AKERLY: Primarily not putting debtor to their burden to put on evidence. There was no proffer. The transcript is -- Your Honor, the transcript is under Tab 13. I have the transcript of the entire proceeding. First of all, the Court didn't take up that issue that Mr. Foley said you did or you thought you did, that legal issue that we mentioned about, you know, elevating to an administrative claim, that was -- Mr. Foley mentioned some things about it, but the Court was

mostly concerned, if you notice, Your Honor, in the transcript, the Court was mostly concerned about how can I, what authority do I have to prosecute a motion to compel assumption? And that's a good questions. I've looked high and low and not found a case that says either way. The code obviously says that it's the debtors' right to assume or reject. It's an or, and here I've explained, you know, the debtors clearly manifested an intention to reject, so we merely moved to compel assumption knowing that they were already planning to object.

But in there, in this particular transcript, Your Honor, there is no attempt on the part of Mr. Foley to say, you know, here's our evidence, here's what we think, here's what's going on here, here's why we think this is of no value to the estate. And all I'm asking for, Your Honor, is an opportunity to put forth the evidence so that Your Honor can have a good record from which we can establish whether or not this is in fact, rejection is in fact in the best interest of the bankruptcy estate applying the business judgment rule. Thank you.

THE COURT: All right, thank you, sir. The Court has before it the verified motion to reconsider the order denying the motion of Ryan Inc., to compel the debtor to assume the executory contract in the order pursuant to Section 365 authorizing the rejection of the executory contract with Ryan.

The Court has previously ruled that the three grounds

to reconsider hearing as has the Fourth Circuit has found the three grounds, recognize them in Hutchinson v. Staton to accommodate intervening change of controlling law to account for new evidence not available at trial or to correct a clear error of law and prevent manifest injustice. The Court does not believe that there is any clear error of law or any manifest injustice that would be prevented by reconsidering the Court's prior ruling. The Court was confident that the debtor was exercising its business judgment in making the decision to reject the contract, and furthermore, the Court did not believe that this was a contract that was capable of being, you know, simply assumed for because any post-petition work performed by a professional would have to have been approved by the Court through appropriate application. So the Court's not going -- is going to deny the motion to reconsider. And, Mr. Foley, I'd ask you to please prepare an order to that effect.

MR. FOLEY: We will, Your Honor. That concludes the remaining matters on the docket.

THE COURT: Okay. Mr. Akerly, thank you for your fine presentation here today.

MR. AKERLY: Thank you, Your Honor.

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C E R T I F I C A T I O N

I, RITA BERGEN, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Rita Bergen DATE: May 13, 2010

RITA BERGEN

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